

FILED IN THE  
US BANKRUPTCY COURT  
DISTRICT OF WYOMING

**IN THE UNITED STATES BANKRUPTCY COURT**

2009 JAN 29 PM 1:10

**FOR THE DISTRICT OF WYOMING**

TIM J. ELLIS, CLERK

BY                       
DEPUTY CLERK

In re:

EDWARD L. PRESLEY,

1842 Sugarland Dr. #108-210

Sheridan, Wyoming 82801

307-752-5731 425-663-6454 (Fax)

epresley@newenergycolic.com

SSN: .....9803

Debtor.

Case No. 04-22389

Chapter 11

APPLIED CAPITAL, INC.

Plaintiff,

v.

EDWARD L. PRESLEY

Defendant.

Adv. No. 05-2084

**RESPONSE/OBJECTION TO THE APPLIED CAPITAL, INC  
MOTION FOR SUMMARY JUDGMENT**

**TO: Honorable Peter J. McNiff  
United States Bankruptcy Judge**

COMES NOW the Debtor/Defendant, *Pro se*, and hereby Responds/Objects to the  
Applied Capital, Inc., Motion for Summary Judgment for the following reasons:

**BACKGROUND**

Plaintiff in December 2005 filed a Motion for Relief of Stay to move the Adversarial  
Proceedings in this matter to the US District Court in New Mexico to join Debtor/Defendant in  
an on going proceeding in that court rather than continue in the Adversarial Proceedings (Case

No. 04-2084) in this Court. Debtor/Defendant filed an Objection to Plaintiff's Motion for Relief, a hearing was held by this Court on May 04, 2006 and over the Debtor/Defendant objections Plaintiff was granted (with conditions) its Motion for Relief of Stay to proceed in the New Mexico US District Court against Debtor/Defendant. On December 30, 2008 Plaintiff filed a Motion for Summary Judgment in this Court asking it to enter a fixed amount Summary Judgment of non-dischargeability against Debtor/Defendant based on the Findings and Order of the New Mexico US District Court.

**I.**

**Plaintiff's Motion has been filed in a case  
that has been dismissed and closed by this Court**

1. Debtor/Defendant first responds or objects to Plaintiff's Motion being filed in a matter that has been dismissed and no business before the Court is pending. On September 18, 2006, the Trustee filed a Motion to Dismiss (Doc #90) in this matter. (See Exhibit-A attached herewith). On November 17, 2006 this Court ruled on the Trustee's Motion to Dismiss, dismissing this matter by an Order of the Court (Doc #99). (See Exhibit-B attached herewith). The PACER History document discloses that on 11/28/2006 this Bankruptcy Case was closed as a matter of court internal record and that on 01/23/2007 as a matter of court internal record this Adversary Case was also closed. (See Exhibit-C attached herewith). Debtor/Defendant does not understand how Plaintiff's Motion can be filed in a matter that has been dismissed and closed by this Court and requests that this Court deny Plaintiff's Motion for Summary Judgment.

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.....

.....

**II.**

**Debtor/Defendant did not waive any rights or make any admissions as to allegations raised in the New Mexico Court**

2. Plaintiff, in his Brief in Support of Summary Judgment, in the Conclusion states in part as follows; *Debtor has admitted that he defrauded ACI and that his debt with ACI is the type that may be deemed nondischargeable.* Debtor/Defendant has never made any such admissions and hereby still denies Plaintiff's allegations and the merits thereof lodged in the New Mexico Court even though that Court was left to deal with a finding based on **uncontroverted and unchallenged allegations** due to Debtor/Defendant's inability to defend himself for lack of funds.

**III.**

**Debtor/Defendant timely raised issues as to what injustice would come forth by the New Mexico proceedings**

3. Plaintiff filed a Motion for Relief of Stay in December 2005 (Doc #44, Case No. 04-22389) and Debtor/Defendant then filed an Objection to Plaintiff's Motion (Doc #72, Case No. 04-22389). (See Exhibit-D attached herewith).
4. Debtor/Defendant in his Objection raised the seminal issue which states in part as follows:

"Respondent respectfully objects to being taken into a court that is over a thousand miles from his home, to fight a battle that he may not be able to win because he is at a disadvantage up against a well financed legal machine barring him from a remedy at law and then being tagged with a judgment that could prejudice this Court in the final analysis of dischargeability." (See Exhibit-D, Doc #72, Item-7, Par-2, Pg-5)

"Movant argues that the *resulting hardship, expense, and delays to ACI greatly outweigh whatever alleged harm Debtor will sustain should it become necessary to defend the claims of ACI in the New Mexico case rather than in the Adversary No. 05-02084. Movant Motion at Pg-11, Par-34.* (Emphasis added). Respondent has demonstrated herein that the aforementioned statement does not hold and the greater harm would be to Respondent by a long measure to the extent he may not ever be able to recover from. Respondent vehemently denies any fraud perpetrated by him, there have been no findings of same in this Court and Respondent wants his day in court, and that it be in this Court. Movant's

arguments for request for relief from stay are nothing more than an attempt to put Respondent at a disadvantage and should be denied.” (See Exhibit-D, Doc #72, CONCLUSION at Pg-5-6).

5. The very injustice raised by Debtor/Defendant hereinabove did indeed happen. Debtor/Defendant did not have funds to mount a defense in the New Mexico Court and that Court rendered a finding that was based on **uncontroverted and unchallenged allegations**.
6. Moreover as was evidenced by the US Trustee in its Motion to Dismiss that Debtor/Defendant was without funds and could not comply with the rules of the chapter 11 proceedings for lack of payments which states in part as follows:

“7. [T]he Debtor is delinquent in payment of his quarterly fees for the first and second quarters of 2006... ..The debtor’s inability to pay his quarterly fees further evidences his inability to reorganize. 8. Based on the above, this case should be dismissed...” (See Exhibit-A, Doc #90, Item 7-8, Pg-2).

7. This Court soon after the US Trustee filed its Motion to Dismiss held a hearing on the matters and issued an Order on November 17, 2006 granting the US Trustee’s Motion wherein the Court in its finding agreed with the US Trustee stating; *The Debtor has very large debts, but few unencumbered assets, and no ability to pay the debts or reorganize.* (See Exhibit-B, Doc #99, Par-1, Pg-2).
8. It is very clear by the US Trustee’s Motion and the Court’s Order in late 2006 that Debtor/Defendant’s financial situation had not changed and he was still destitute and his Bankruptcy case was dismissed. Debtor/Defendant never did have sufficient funds to mount any kind of a defense in the New Mexico Court and Plaintiff’s strategy to get a finding and judgment based on **uncontroverted and unchallenged allegations** worked very well in their favor.
9. If Plaintiff’s Motion for Summary is granted without there being a proper defense and challenge afforded Debtor/Defendant, that will be tantamount to making the entire

Bankruptcy Act null and void availing no protection at all to the Debtor/Defendant. To the point, Plaintiff gets an upper advantaged Order against Debtor/Defendant by and through a structured way of preventing Debtor/Defendant to afford a defense and then bring that Order back and try to drive that Order down the throat of this Court, hamstringing this Court and leaving Debtor/Defendant with no remedy at law for lack of funds for a defense.

#### IV.

#### **This Court did avail protection to Debtor/Defendant in its Order granting Relief of Stay to Plaintiff**

10. Debtor/Defendant did raise all the above issues in the non-evidentiary hearing before this Court back in May of 2006. (See Exhibit-E, Docs #79 & 80). This Court took that into consideration and stated in its Minutes of Proceedings that; *Presumably when NM litigation completes, Parties could return to this Court to determine dischargeability.* (Exhibit-E, Doc #79 Ruling Section).

11. In its Order on Plaintiff's Motion for Relief of Stay, this Court stated in part as follows:

“...**provided, however,** that Movant, Applied Capital, Inc, shall not take any action in that forum to enforce any judgment that may be entered against Debtor on the verified complaint or to otherwise enforce any judgment against or property of the estate without a final decision of the Court **on the merits of the complaint of Movant,** Applied Capital, Inc., in Adversary No. 05-2084, or as the Court may otherwise order in this case;...(See Exhibit-F, Doc #84, Pg 5&6) (First emphasis in original, Second emphasis supplied).

#### **CONCLUSION**

Debtor/Defendant has shown herein that Plaintiff did get an unfair advantaged Order from another court due to the fact that Debtor/Defendant could not mount a defense against the allegations in Plaintiff's New Mexico litigation. Had Debtor/Defendant been able to put on certain witnesses to refute Plaintiff's allegations and prevail there upon, Plaintiff would not be

entitled to any punitive damages (which may be an undue piling on) and is the largest portion of Plaintiff's judgment.

Debtor/Defendant has a right to challenge his accuser and the allegation in a proper forum and not be railroaded from equitable justice because he can not afford to mount a defense that is over a 1000 miles away from his home. This type of structuring in litigation strips Debtor/Defendant of a remedy at law because he has no money, not because he lost on the merits. This Court has the jurisdiction to remedy such a situation and see to it that Debtor/Defendant's rights are protected and properly adjudicate this matter in this Court allowing Debtor/Defendant to mount a proper defense against those allegations to determine the dischargeability of his debt.

**WHEREFORE**, Plaintiff's Motion for Summary Judgment should be denied and Debtor/Defendant asks that this Court protect his rights and/or in the alternative establishes a proceeding wherein he can defend himself on these issues before this Court renders a ruling on dischargeability of Plaintiff's claim.

Dated this 28<sup>th</sup> day January, 2009

Respectfully submitted,

  
\_\_\_\_\_  
Edward L. Presley, Pro Se  
Debtor/Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of January, 2009, I served the **RESPONSE/OBJECTION TO THE APPLIED CAPITAL, INC MOTION FOR SUMMARY JUDGMENT** upon Movant Applied Capital, Inc. by depositing a true and correct copy of the same in the United States Mail, postage prepaid, and addressed to:

**Counsel for Applied Capital, Inc:**

**Tim Stubson or Eric K. Nelson  
Brown, Drew & Massey, LLP  
159 North Wolcott Street, Ste 200  
Casper, Wyoming 82601**

  
\_\_\_\_\_  
**Edward L. Presley, Pro Se**

**EXHIBIT-A**



CHARLIE McVAY  
UNITED STATES TRUSTEE  
REGION 19

MICHELE R. HANKINS  
ASSISTANT U.S. TRUSTEE  
308 West 21st Street, Room 203  
Cheyenne, Wyoming 82001  
307-772-2790

#90

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF WYOMING

In Re:	)	
	)	
Edward L. Presley,	)	Case No. 04-22389
	)	Chapter 11
Debtor.	)	

**UNITED STATES TRUSTEE'S MOTION  
TO DISMISS OR CONVERT CASE**

The United States Trustee ("UST"), in support of his Motion to Dismiss or Convert the above captioned case, states as follows:

1. This case was filed as a voluntary chapter 11 proceeding on December 13, 2004, almost two years ago.

2. Edward Presley, the debtor herein, is the operating manager and principal of New Energy Co., LLC, ("New Energy"), which filed for protection under Chapter 11 on December 20, 2004, case number 04-22426.

3. Mr. Presley stated at his 11 U.S.C. § 341 Meeting of

Creditors that his ability to reorganize depended on New Energy's ability to sell its assets.

4. Despite numerous requests for extensions of time, New Energy was not able to consummate the sale of its assets and the Court dismissed that case by order dated September 12, 2006.

5. As of this date, the debtor has not filed a plan and disclosure statement.

6. The debtor has failed to file his monthly operating reports for the months of July and August of 2006.

7. The debtor is delinquent in the payment of his quarterly fees for the first and second quarters of 2006 in the amount of \$500.00; furthermore, the debtor will owe an additional \$250.00 as of October 1, 2006, for the third quarter of 2006. The debtor's inability to pay his quarterly fees further evidences his inability to reorganize.

8. Based on the above, this case should be dismissed pursuant to 11 U.S.C. § 1112(b) (1) (continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation); 1112(b) (2) (inability to effectuate a plan); 1112(b) (3) (unreasonable delay by the debtor that is prejudicial to creditors); and 1112(b) (10) (nonpayment of any fees required under 28 U.S.C. § 1930(6)).

WHEREFORE, the United States Trustee prays this Honorable Court to either dismiss or convert this case, whichever is in the best

interest of the estate and its creditors.

Dated: September 18, 2006

Respectfully submitted,

CHARLES McVAY  
United States Trustee  
Region 19

BY:

Michele R. Hankins  
Assistant U.S. Trustee

Certificate of Mailing

I, Georgia A. George, certify that on September 18, 2006, a true and correct copy of the above and the proposed order thereon, were served upon the following via U.S. mail, postage prepaid:

Edward L. Presley  
660 Fort Road  
Sheridan, WY 82801

/s/  
Georgia A. George  
Office of U.S. Trustee

**EXHIBIT-B**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF WYOMING

In re

EDWARD L. PRESLEY,

Debtor.

)  
)  
)  
)  
)

Case No. 04-22389  
Chapter 11

#99

**ORDER DISMISSING CASE**

On November 9, 2006, the court held a hearing on the United States Trustee's Motion to Dismiss or Convert this chapter 11 case. At the hearing and on request of the Debtor, Edward L. Presley, the court took the motion under advisement for an additional week in order that the sale of assets in a related chapter 11 case, New Energy, Co, LLC, could be completed.

The court has jurisdiction over this chapter 11 case under 28 U.S.C. §§ 157 & 1334(a). The case is governed by the Bankruptcy Code in effect prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act.


Nothing further has been filed in the case since the hearing. The court finds that this case was filed on December 13, 2004 and has been pending for two years. No action has been taken by the Debtor to achieve confirmation of a chapter 11 plan. No plan or disclosure statement has been filed, and the Debtor has no ongoing business. The Debtor's stated intention was to sell assets in the New Energy, Inc. chapter 11 case, pay all of the creditors, and to dismiss both cases voluntarily. A sale of the assets has not occurred, despite numerous extensions of time and vigorous efforts on the part of the Debtor and his creditors.

The Debtor's financial reports and his quarterly fee payments due under 28 U.S.C. § 1930 are delinquent. The Debtor has very large debts, but few unencumbered assets, and no ability to pay the debts or reorganize. Delay is obvious.

IT IS THEREFORE ORDERED that this case is dismissed pursuant to 11 U.S.C. § 1112 (b)(1), (2), (3), (4), & (10).

DATED this 17 day of November, 2006.

By the Court

  
HONORABLE PETER J. MCNIFF  
United States Bankruptcy Judge

**EXHIBIT-C**

**04-22389** Edward L. Presley**Case type:** bk **Chapter:** 11 **Asset:** Yes **Vol:** v **Judge:** Peter J. McNiff**Date filed:** 12/13/2004**Date terminated:** 11/28/2006 **Date of last filing:** 01/23/2007

## History

Doc. No.	Dates	Description
--	<i>Filed &amp; Entered:</i> 01/23/2007	Close Adversary Case
--	<i>Filed &amp; Entered:</i> 11/28/2006	Close Bankruptcy Case
<u>100</u>	<i>Filed &amp; Entered:</i> 11/19/2006	BNC Certificate of Mailing - PDF Document
* <u>99</u>	<i>Filed &amp; Entered:</i> 11/17/2006	Order on Motion to Dismiss Case
<u>98</u>	<i>Filed &amp; Entered:</i> 11/11/2006	BNC Certificate of Mailing - PDF Document
<u>97</u>	<i>Filed &amp; Entered:</i> 11/09/2006	Minutes of Proceedings (Order)
<u>96</u>	<i>Filed &amp; Entered:</i> 10/27/2006	BNC Certificate of Mailing - PDF Document
<u>95</u>	<i>Filed &amp; Entered:</i> 10/25/2006	Order Scheduling Hearing
<u>94</u>	<i>Filed &amp; Entered:</i> 10/24/2006 <i>Terminated:</i> 10/26/2006	Motion to Continue/Reschedule Hearing
<u>93</u>	<i>Filed &amp; Entered:</i> 10/18/2006	Witness List
<u>92</u>	<i>Filed &amp; Entered:</i> 09/22/2006	BNC Certificate of Mailing - PDF Document
<u>91</u>	<i>Filed &amp; Entered:</i> 09/20/2006	Order Scheduling Hearing
* <u>90</u>	<i>Filed &amp; Entered:</i> 09/18/2006 <i>Terminated:</i> 11/17/2006	Motion to Dismiss Case
<u>86</u>	<i>Filed &amp; Entered:</i> 07/12/2006	Monthly Financial Report
<u>87</u>	<i>Filed &amp; Entered:</i> 07/12/2006	Monthly Financial Report
<u>88</u>	<i>Filed &amp; Entered:</i> 07/12/2006	Monthly Financial Report
<u>89</u>	<i>Filed &amp; Entered:</i> 07/12/2006	Certificate of Service
<u>85</u>	<i>Filed &amp; Entered:</i> 05/24/2006	BNC Certificate of Mailing - PDF Document
* <u>84</u>	<i>Filed &amp; Entered:</i> 05/22/2006	Order on Motion For Relief From Stay
* <u>83</u>	<i>Filed:</i> 05/16/2006 <i>Entered:</i> 05/18/2006	Objection to
<u>81</u>	<i>Filed &amp; Entered:</i> 05/09/2006	Notice
<u>82</u>	<i>Filed &amp; Entered:</i> 05/09/2006	Proposed Order
* <u>79</u>	<i>Filed &amp; Entered:</i> 05/04/2006	Minutes of Proceedings
* <u>80</u>	<i>Filed &amp; Entered:</i> 05/04/2006	Minutes of Proceedings
<u>78</u>	<i>Filed &amp; Entered:</i> 05/03/2006	Monthly Financial Report
<u>77</u>	<i>Filed &amp; Entered:</i> 04/26/2006	BNC Certificate of Mailing - PDF Document
<u>76</u>	<i>Filed &amp; Entered:</i> 04/24/2006	Order Scheduling Hearing



\*

<u>75</u>	<i>Filed &amp; Entered:</i> 04/20/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>73</u>	<i>Filed &amp; Entered:</i> 04/18/2006	🔍 Request For Hearing
<u>74</u>	<i>Filed &amp; Entered:</i> 04/18/2006	🔍 Order Scheduling Hearing
<u>72</u>	<i>Filed &amp; Entered:</i> 04/14/2006	🔍 Objection to
<u>71</u>	<i>Filed &amp; Entered:</i> 04/06/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>70</u>	<i>Filed &amp; Entered:</i> 04/04/2006	🔍 Order on Motion to Extend Time
<u>69</u>	<i>Filed &amp; Entered:</i> 03/30/2006 <i>Terminated:</i> 04/04/2006	🔍 Motion to Extend Time
<u>65</u>	<i>Filed &amp; Entered:</i> 03/27/2006	🔍 Operating Report
<u>66</u>	<i>Filed &amp; Entered:</i> 03/27/2006	🔍 Operating Report
<u>67</u>	<i>Filed &amp; Entered:</i> 03/27/2006	🔍 Certificate of Service
<u>68</u>	<i>Filed &amp; Entered:</i> 03/27/2006	🔍 Notice of Change of Address
--	<i>Filed &amp; Entered:</i> 03/14/2006	🔍 Update Objection/Response Deadline
<u>64</u>	<i>Filed:</i> 03/08/2006 <i>Entered:</i> 03/09/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>63</u>	<i>Filed &amp; Entered:</i> 03/06/2006	🔍 Order on Motion to Extend Time
<u>62</u>	<i>Filed &amp; Entered:</i> 03/03/2006 <i>Terminated:</i> 03/06/2006	🔍 Motion to Extend Time
<u>61</u>	<i>Filed &amp; Entered:</i> 03/01/2006	🔍 Complaint
<u>60</u>	<i>Filed:</i> 02/24/2006 <i>Entered:</i> 02/25/2006	🔍 BNC Certificate of Mailing - PDF Document
--	<i>Filed &amp; Entered:</i> 02/22/2006	🔍 Update Objection/Response Deadline
<u>59</u>	<i>Filed &amp; Entered:</i> 02/22/2006	🔍 Order on Motion to Extend Time
<u>58</u>	<i>Filed &amp; Entered:</i> 02/17/2006 <i>Terminated:</i> 02/22/2006	🔍 Motion to Extend Time
<u>57</u>	<i>Filed:</i> 02/01/2006 <i>Entered:</i> 02/02/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>56</u>	<i>Filed &amp; Entered:</i> 01/30/2006	🔍 Order on Motion to Extend Time
<u>55</u>	<i>Filed &amp; Entered:</i> 01/25/2006 <i>Terminated:</i> 01/30/2006	🔍 Motion to Extend Time
<u>53</u>	<i>Filed &amp; Entered:</i> 01/22/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>54</u>	<i>Filed &amp; Entered:</i> 01/22/2006	🔍 BNC Certificate of Mailing - PDF Document
<u>51</u>	<i>Filed &amp; Entered:</i> 01/20/2006	🔍 Order on Motion to Extend Time
<u>52</u>	<i>Filed &amp; Entered:</i> 01/20/2006	🔍 Order on Motion to Extend Time
<u>49</u>	<i>Filed &amp; Entered:</i> 01/17/2006 <i>Terminated:</i> 01/20/2006	🔍 Motion to Extend Time
<u>50</u>	<i>Filed &amp; Entered:</i> 01/17/2006 <i>Terminated:</i> 01/20/2006	🔍 Motion to Extend Time
<u>48</u>	<i>Filed &amp; Entered:</i> 01/04/2006	🔍 Notice Pursuant to LBR 4001-1




<u>47</u>	<i>Filed &amp; Entered:</i> 12/31/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>46</u>	<i>Filed &amp; Entered:</i> 12/29/2005	🔍 Order Regarding Compliance With Rules
<u>44</u>	<i>Filed &amp; Entered:</i> 12/28/2005 <i>Terminated:</i> 05/22/2006	🔍 Motion for Relief From Stay
<u>45</u>	<i>Filed &amp; Entered:</i> 12/28/2005	🔍 Automatic docket of credit card
--	<i>Filed &amp; Entered:</i> 12/22/2005	🔍 Receipt Number and Filing Fee
<u>43</u>	<i>Filed &amp; Entered:</i> 12/22/2005	🔍 Complaint
<u>42</u>	<i>Filed &amp; Entered:</i> 11/20/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>41</u>	<i>Filed &amp; Entered:</i> 11/18/2005	🔍 Order on Motion to Extend Time
<u>40</u>	<i>Filed &amp; Entered:</i> 11/17/2005 <i>Terminated:</i> 11/18/2005	🔍 Motion to Extend Time
<u>37</u>	<i>Filed &amp; Entered:</i> 10/31/2005	🔍 Monthly Financial Report
<u>38</u>	<i>Filed &amp; Entered:</i> 10/31/2005	🔍 Monthly Financial Report
<u>39</u>	<i>Filed &amp; Entered:</i> 10/31/2005	🔍 Monthly Financial Report
<u>36</u>	<i>Filed &amp; Entered:</i> 09/04/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>35</u>	<i>Filed &amp; Entered:</i> 09/02/2005	🔍 Order on Motion to Extend Time
<u>34</u>	<i>Filed &amp; Entered:</i> 09/01/2005 <i>Terminated:</i> 09/02/2005	🔍 Motion to Extend Time
<u>32</u>	<i>Filed &amp; Entered:</i> 07/21/2005	🔍 Monthly Financial Report
<u>33</u>	<i>Filed &amp; Entered:</i> 07/21/2005	🔍 Monthly Financial Report
<u>31</u>	<i>Filed &amp; Entered:</i> 06/09/2005	🔍 BNC Certificate of Mailing - PDF Document
--	<i>Filed &amp; Entered:</i> 06/07/2005	🔍 Corrective Entry
<u>30</u>	<i>Filed &amp; Entered:</i> 06/07/2005	🔍 Order on Motion to Extend Time
<u>29</u>	<i>Filed &amp; Entered:</i> 06/02/2005 <i>Terminated:</i> 06/07/2005	🔍 Motion to Extend Time
<u>28</u>	<i>Filed &amp; Entered:</i> 05/19/2005	🔍 Operating Report
<u>27</u>	<i>Filed &amp; Entered:</i> 03/02/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>26</u>	<i>Filed &amp; Entered:</i> 02/28/2005	🔍 Order on Motion to Extend Time
<u>25</u>	<i>Filed &amp; Entered:</i> 02/25/2005 <i>Terminated:</i> 02/28/2005	🔍 Motion to Extend Time
<u>23</u>	<i>Filed &amp; Entered:</i> 02/16/2005	🔍 Notice
<u>24</u>	<i>Filed &amp; Entered:</i> 02/16/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>22</u>	<i>Filed &amp; Entered:</i> 02/14/2005	🔍 Order (Generic)
<u>21</u>	<i>Filed &amp; Entered:</i> 02/11/2005	🔍 Withdrawal
<u>20</u>	<i>Filed &amp; Entered:</i> 02/06/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>19</u>	<i>Filed &amp; Entered:</i> 02/04/2005	🔍 Order on Motion to Appear pro hac vice
<u>17</u>	<i>Filed &amp; Entered:</i> 02/03/2005	🔍 Notice of Appearance
<u>18</u>	<i>Filed &amp; Entered:</i> 02/03/2005 <i>Terminated:</i> 02/04/2005	🔍 Motion to Appear pro hac vice

<u>16</u>	<i>Filed &amp; Entered:</i> 01/26/2005	🔍 BNC Certificate of Mailing - PDF Document
<u>14</u>	<i>Filed &amp; Entered:</i> 01/24/2005	🔍 Order on Application to Employ
<u>15</u>	<i>Filed &amp; Entered:</i> 01/24/2005	🔍 Monthly Financial Report
<u>13</u>	<i>Filed &amp; Entered:</i> 01/18/2005 <i>Terminated:</i> 01/24/2005	🔍 Application to Employ
<u>12</u>	<i>Filed &amp; Entered:</i> 01/14/2005	🔍 Notice of Appearance
<u>10</u>	<i>Filed &amp; Entered:</i> 01/10/2005	🔍 Notice of Appearance
<u>11</u>	<i>Filed &amp; Entered:</i> 01/10/2005	🔍 Creditor Request for Notices
--	<i>Filed &amp; Entered:</i> 01/06/2005	🔍 341 Meeting Concluded
<u>9</u>	<i>Filed &amp; Entered:</i> 01/06/2005	🔍 Statement of No Creditor Committee
--	<i>Filed &amp; Entered:</i> 01/04/2005	🔍 Receipt Number and Filing Fee
<u>6</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Initial Financial Report
<u>7</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Notice of Change of Address
<u>8</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Declaration
<u>8</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Schedules A-J
<u>8</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Statement of Financial Affairs
<u>8</u>	<i>Filed &amp; Entered:</i> 12/29/2004	🔍 Summary of Schedules
<u>5</u>	<i>Filed &amp; Entered:</i> 12/16/2004	🔍 BNC Certificate of Mailing - Meeting of Creditors
<u>4</u>	<i>Filed &amp; Entered:</i> 12/15/2004	🔍 BNC Certificate of Mailing
<u>3</u>	<i>Filed &amp; Entered:</i> 12/14/2004	🔍 Meeting of Creditors Chapter 11 & 12
--	<i>Filed:</i> 12/13/2004 <i>Entered:</i> 06/03/2005	🔍 Receipt Number and Filing Fee
<u>1</u>	<i>Filed &amp; Entered:</i> 12/13/2004	🔍 Voluntary Petition (Chapter 11)
<u>2</u>	<i>Filed &amp; Entered:</i> 12/13/2004	🔍 Social Security Number

## PACER Service Center

## Transaction Receipt

01/26/2009 10:01:12

<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	History/Documents	<b>Search Criteria:</b>	04-22389 Type: History
<b>Billable Pages:</b>	4	<b>Cost:</b>	0.32

**EXHIBIT-D**

FILED IN THE  
US BANKRUPTCY COURT  
DISTRICT OF WYOMING

06 APR 14 AM 11:15

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF WYOMING**

JOYCE V. HARRIS, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

In re:

**EDWARD L. PRESLEY,**

660 Fort Road  
Sheridan, Wyoming 82801  
307-752-5731 425-663-6454 (Fax)  
[epresley@newenergycolic.com](mailto:epresley@newenergycolic.com)  
SSN: .....9803

**Debtor.**

**APPLIED CAPITAL, INC. a New  
Mexico Corporation,**

**Movant**

**vs.**

**EDWARD L. PRESLEY**

**Respondent.**

Case No. 04-22389

Chapter 11

#72

**OBJECTION TO MOTION OF APPLIED CAPITAL, INC FOR PERMISSIVE  
ABSTENTION AND FOR RELIEF FROM AUTOMATIC STAY AND REQUEST FOR  
HEARING**

**TO: Honorable Peter J. McNiff  
United States Bankruptcy Judge**

**COMES NOW, EDWARD L. PRESLEY, Respondent, and objects to Movant's  
requested relief and requests a hearing on the matter and that this Honorable Court deny  
Movant's motion for the following reasons:**

### **BACKGROUND**

Movant has filed a motion for relief from stay to take Debtor into a proceeding in the United States District Court in New Mexico and at the same time has filed an adversary proceeding in this court, Case No. 05-02084. Movant discloses in his motion that the complaint in the adversary proceeding in this Court is "*similar or identical to the allegations that ACI has made in the New Mexico case and arise out of the same common nucleus of facts*". Movant Motion at Pg-4, Par-11. Respondent was granted by this court an extension of time to April 14<sup>th</sup>, 2006 to object to Movant's motion, this objection is timely filed.

### **ARGUMENT**

1. Movant and Respondent have an agreement in principal that all of this litigation will go away, as it pertains to Respondent, when the assets are paid for by the Buyer in the sister matter, *In re. NEW Energy Co., LLC, Case No. 04-22426*. Moreover, Movant is in continued contact with counsel for Buyer on the progress of that funding and has supported Buyers efforts to obtain that funding because that sale is the only way any of the creditors will get paid.

2. Movant has at its disposal a well financed legal machine to-wit Respondent does not and is at a disadvantage and it would be extremely burdensome to take on several cases at the same time, especially when the matter in New Mexico is over a thousand miles from Respondent's home base.

3. Movant argues to this Court that he will be harmed if he can not litigate state law issues in another venue other than this Court. This argument fails by a full and fair reading of the very case law authority he cites to gain relief from stay. In addition thereto, Movant makes

the claim that if relief is not allowed there could be conflicting decisions arise in two separate courts thereby lending confusion to the determination of dischargeability of the Debtor.

4. Movant's reliance on *Cohen v. De La Cruz*, 523 U.S. 213 (1998), misses the mark because the case stated what the real issue was, which states in part; *[T]he issue in this case is whether §523(a)(2)(A) bars the discharge of treble damages awarded on account of the debtor's fraudulent acquisition of "money, property, services, or ... credit," or whether the exception only encompasses the value of the "money, property, services, or ... credit" the debtor obtains through fraud.* *Cohen* at \_\_\_\_\_. (Emphasis added).

The *Cohen* court was ruling on a matter after the Bankruptcy court had had a trial to determine the allegations of fraud etc. that were in dispute. The very same issues that Movant wishes to have heard in the New Mexico case will eventually have to be addressed here in this Court if non-dischargeability becomes an issue in this case.

The *Cohen* court also addressed the issue of conflicting decisions by illustrating that differing decisions are not uncommon even within the Bankruptcy court theater.

As the Court of Appeals recognized, *id.*, at 56, its interpretation of §523(a)(2)(A) is in accord with that of the Eleventh Circuit but in conflict with that of the Ninth Circuit. Compare *In re St. Laurent*, 991 F.2d 672, 677—681 (CA11 1993), with *In re Levy*, 951 F.2d 196, 198—199 (CA9 1991). Bankruptcy courts have likewise reached differing conclusions on whether §523(a)(2)(A) prevents the discharge in bankruptcy of punitive damages awarded on account of fraud. Compare *In re George*, 205 B. R. 679, 682 (Bkrcty. Ct. Conn. 1997) (punitive damages not dischargeable); *In re Spicer*, 155 B. R. 795, 801 (Bkrcty. Ct. DC) (same), *aff'd*, 57 F.3d 1152 (CA DC 1995), *cert. denied*, 516 U.S. 1043 (1996); *In re Winters*, 159 B. R. 789, 790 (Bkrcty. Ct. ED Ky. 1993) (same), with *In re Bozzano*, 173 B. R. 990, 997—999 (Bkrcty. Ct. MDNC 1994) (punitive damages dischargeable); *In re Sciscoe*, 164 B. R. 86, 89 (Bkrcty. Ct. SD Ind. 1993) (same); *In re Brady*, 154 B. R. 82, 85 (Bkrcty. Ct. WD Mo. 1993) (same). We noted the issue without resolving it in *Grogan v. Garner*, 498 U.S. 279, 282, n. 2 (1991). We granted certiorari to address the conflict in the lower courts, 521 U.S. (1997), and we now affirm. *Cohen* at \_\_\_\_\_. (Emphasis added)

Movant's request fails because he has the ability to obtain the relief he wants in his adversary proceeding here in this Court. It would be excessive harm to Respondent if he had to litigate the same issues in two different proceedings either at separate times or simultaneously.

5. Movant claims support for his relief that he needs to have Respondent joined in the New Mexico case as an additional real party so that discovery can begin. Movant Motion at Pg-4, Par-13. Movant has been granted by this court relief to have NEW Energy Co., LLC joined in that matter. Moreover, Movant has performed extensive discovery at the full cooperation of Respondent and NEW Energy in the past year. Movant's counsel had one of its colleagues spend over two weeks, with a computer expert going over any document they wished to copy or review. This is just an attempt to cause additional hardship upon Respondent to supply what Movant already has in its possession. In addition, Respondent has offered to cooperate with Movant in the New Mexico matter to help them with their prosecution against the already named defendants in that matter. The principal of ACI, Jim Scott is taking that matter under advisement with his counsel in the New Mexico case and will be getting back to Respondent in the near future. It would be much better to have Respondent helping Movant in a non-adversary manner.

6. Movant states in part; *[S]econd, the New Mexico case can be adjudicated in a more timely fashion than Adversary No. 05-02084. Movant Motion at Pg-7, Par-18*. (Emphasis added). This does not reconcile with his argument put forth in paragraph 20 on the same page stating in part; *...this Court could properly give collateral estoppel to those elements of fraud that are identical to the elements required for discharge... Movant Motion at Pg-7, Par-20*. Again, this would result in double litigation for Responded and undue hardship.



7. Movant, in footnote 4 of paragraph 23 at page 8, states that this Court is too burdened to handle this matter because of the increased case load after October 17, 2005. While there might be an increased case load because of the law change, Respondent is not willing to waive or jeopardize his rights accorded him in this Court for the sake of convenience. In addition, this Court has jurisdiction and is more than capable of handling the matter that is already before it.

Respondent respectfully objects to being taken into a court that is over a thousand miles from his home, to fight a battle that he may not be able to win because he is at a disadvantage up against a well financed legal machine barring him from a remedy at law and then being tagged with a judgment that could prejudice this Court in the final analysis of dischargeability.

Movant already has the capability of a judgment by way of the Unconditional Guarantee executed by Respondent when payment was not made in a timely manner and it appears that Respondent can not challenge that because of the waiver. See Movant's claim filed with this Court.

### **CONCLUSION**

Movant argues that the *resulting hardship, expense, and delays to ACI greatly outweigh whatever alleged harm Debtor will sustain should it become necessary to defend the claims of ACI in the New Mexico case rather than in the Adversary No. 05-02084. Movant Motion at Pg-11, Par-34.* (Emphasis added). Respondent has demonstrated herein that the aforementioned statement does not hold and the greater harm would be to Respondent by a long measure to the extent he may not ever be able to recover from. Respondent vehemently denies any fraud perpetrated by him, there have been no findings of same in this Court and Respondent wants his

day in court, and that it be in this Court. Movant's arguments for request for relief from stay are  
nothing more than an attempt to put Respondent at a disadvantage and should be denied.

**WHEREFORE**, Respondent prays that Movant's motion be denied, that this matter be set for hearing and for such other and further relief as the Court deems meet in the premises.

Dated this 13<sup>th</sup> day April, 2006

Respectfully submitted,

Edward L. Presley, *Pro Se*  
Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of April, 2006, I served the **OBJECTION TO MOTION OF APPLIED CAPITAL, INC FOR PERMISSIVE ABSTENTION AND FOR RELIEF FROM AUTOMATIC STAY AND REQUEST FOR HEARING** upon Movant Applied Capital, Inc. and members of the Committee of Unsecured Creditors and other parties in interest by depositing true and correct copies of the same in the United States Mail, postage prepaid, and addressed to:

**Committee of Unsecured Creditors:**

Applied Capital, Inc.  
c/o Donn J. McCall  
Brown, Drew & Massey, LLP  
Ohio Oil Building  
Suite 200, 159 North Wolcott Street  
Casper, Wyoming 82601

Dan McLaren  
c/o Stewart R. Wilson  
Wilson and Barrows, Ltd.  
442 Court Street  
Elko, Nevada 89801

Western Energy Partners, LLC  
c/o Thomas H. Keyse  
Block Markus & Williams LLC  
1700 Lincoln Street, Suite 4000  
Denver, Colorado 80203

**United States Trustee**

**Michele R. Hankins  
Office of the United States Trustee  
308 West 21st Street  
Room 203  
Cheyenne, Wyoming 82001**

**Dated this 13<sup>th</sup> day of April, 2006.**



**Edward L. Piesley, Pro Se**

**EXHIBIT-E**



2:50 pm, 5/4/08

Joyce W. Harris  
Clerk of Court

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF WYOMING

Minutes of Proceedings

Date: May 4, 2006 Time: 9:20am To: 10:10am Location: Telephone

In re Presley,  
Case No. 04-22389  
Chapter 11

#79

Presiding: Peter J. McNiff  
U.S. Bankruptcy Judge

Proceedings Electronically Recorded  
For copy of recording contact Bankruptcy Clerk's Office at 307-433-2200

Appearances:

Trustee:  
Debtor(s): pro se  
Creditor:  
Creditor:  
U.S. Trustee:

Counsel:  
Counsel:  
Counsel: Donn McCall  
Counsel:  
Counsel:

Proceedings: Hearing on Motion for Abstention filed by Applied Capital

Witnesses Sworn:

Positions of the Parties: *McCall - seeking abstention of litigation in 05-2084 in favor of liquidating estate in USDC in N.M. civil action. All elements met under 11 USC 541(c)(1) - issues of apportioned damages & liability, efficiency.*  
*Presley: Prefers to participate w/ morant agent the other - not as an adversary - default inevitable. This from letter for debtor.*

Ruling:

☒ Relief sought: ☒ Granted ☐ Denied  
☐ Objection: ☐ Sustained ☐ Overruled  
☐ Matter taken under advisement  
☐ Oral findings and conclusions made of record  
☐ Formal order or Judgment to enter ☐ To be prepared by *McCall*  
☐ These minutes constitute the court's official order in this matter

Ruling: *Presumably when NM litigation complete, parties could return to this court to determine dischargeability -*  
*Ch 11 16 mos old, no plan & no sale*  
*Better to litigate where all parties are joined & state law claims*  
*is waiver of 10 day stay after entry of order*

Date: *5-4-06*

FOR THE COURT:

Joyce W. Harris, Clerk

By *Bonnie Danna*  
Deputy Clerk



2:50 pm, 5/4/06

Joyce W. Harris  
Clerk of Court

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF WYOMING

Minutes of Proceedings

Date: May 4, 2006

Time: 9:20am To: 10:10am Location: Telephone

In re Presley,

Case No. 04-22389

Chapter 11

#80

Presiding: Peter J. McNiff

U.S. Bankruptcy Judge

Proceedings Electronically Recorded

For copy of recording contact Bankruptcy Clerk's Office at 307-433-2200

Appearances:

Trustee:

Debtor(s): pro se

Creditor:

Creditor:

U.S. Trustee:

Counsel:

Counsel:

Counsel: Donn McCall

Counsel:

Counsel:

Proceedings: Preliminary hearing on Motion for Relief from Stay filed by Applied Capital

Witnesses Sworn:

Positions of the Parties: *McCall - AC. seeking relief to join Mr. Presley as a def in USDC in N.M. civil case. N.M. case pending since Jan '05 that court set a deadline to join Mr. Presley & others. alleging fraud. All 4 factors under 5362 met.*  
*Presley: mere allegations - knew enough already a party guarantor only - frivolous case*

Ruling:

- ☒ Relief sought: ☒ Granted ☐ Denied  
☐ Objection: ☐ Sustained ☐ Overruled  
☐ Matter taken under advisement  
☐ Oral findings and conclusions made of record  
☐ Formal order or Judgment to enter ☐ To be prepared by McCall  
☐ These minutes constitute the court's official order in this matter

Ruling:

*Case is 1 1/2 yrs old without a plan & no sale yet. State law claims better litigated in N.M. with all parties joined.*  
*No enforcement action of any sort w/out further order of the court.*  
*No waiver of 10 day stay after judgment.*

Date: 5-4-06

FOR THE COURT:

Joyce W. Harris, Clerk

By Donna Harris  
Deputy Clerk

**EXHIBIT-F**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF WYOMING

In re:

EDWARD L. PRESLEY,  
SSN XXX-XX-9803,

Debtor.

APPLIED CAPITAL, INC., a New  
Mexico corporation,

Plaintiff,

vs.

EDWARD L. PRESLEY,

Defendant.

Case No. 04-22389  
Chapter 11

#84

Adversary No. 05-2084



10:17 am, 5/22/06

Joyce W. Harris  
Clerk of Court

**ORDER ABSTAINING FROM HEARING ADVERSARY  
PROCEEDING NO. 05-2084 AND GRANTING APPLIED  
CAPITAL, INC. RELIEF FROM AUTOMATIC STAY**

THIS MATTER came before the Court on May 4, 2006, pursuant to previous notice and setting, for joint hearings on the Motion of Applied Capital, Inc. for Permissive Abstention and for Relief from Automatic Stay (the "joint motion"), originally served and filed by Applied Capital, Inc. ("ACI") in the above-captioned base chapter 11 case on December 28, 2005, and the objection filed by Debtor and Debtor in Possession, Edward L. Presley ("Debtor"), to the joint motion. The following appearances were made on behalf of the parties who participated in the joint hearings: Donn J.

McCall, of Brown, Drew & Massey, LLP, Casper, Wyoming, as counsel for ACI; and Debtor, Edward L. Presley, *pro se* on his own behalf.

In the joint motion, ACI is seeking two types of relief from the Court. First, ACI requests the Court to modify the automatic stay in effect in the base chapter 11 case so as to permit it to join Debtor as a defendant in a certain lawsuit that is pending in the United States District Court for the District of New Mexico. Second, ACI asks the Court to abstain from hearing an adversary proceeding it has filed against Debtor within the base case so that it may proceed to litigate its claims against Debtor and the other non-debtor parties in the New Mexico litigation to conclusion. Since the joint motion makes two requests for relief that are subject to disposition under different rules of procedure, the Court, in separate orders entered on April 18, 2006 and April 24, 2006, respectively, noticed a non-evidentiary preliminary hearing on ACI's motion for relief from the automatic stay and a non-evidentiary hearing on ACI's motion for permissive abstention for consideration in one consolidated setting.<sup>1</sup>

The Court having considered the joint motion and the objection of Debtor to the relief requested in the joint motion, together with the statements made by ACI's counsel and by Debtor at the joint hearings thereon, and being in all respects fully informed and advised in the premises, and it appearing that good and sufficient notice of the joint motion of ACI for permissive abstention and for relief from the automatic stay

---

<sup>1</sup> While ACI has filed, in effect, a combined motion seeking two types of relief, there is no rule that prohibits consolidation of the two requests for hearing and disposition. In this instance, the motion for relief from the automatic stay has been properly filed, and is being considered, in the base bankruptcy case, while the motion for permissive abstention, though filed in the base case, also relates to, and should be part of the record of, the adversary proceeding. Accordingly, for clarity of the record, the Clerk of Court should docket this Order in both the base bankruptcy case and the adversary proceeding dockets.

and of the time to object to the relief requested in the joint motion was served on Debtor, the Committee of Unsecured Creditors, the United States Trustee, and all other parties in interest, and it further appearing that except for Debtor, no other party served with notice or otherwise entitled to participate in the determination of the joint motion has objected to such motion or requested a hearing thereon, the Court hereby finds that on December 13, 2004 (the "petition date"), Debtor commenced the base bankruptcy case by filing a voluntary petition for reorganization under chapter 11 of Title 11, United States Code; that ACI has commenced an adversary proceeding against Debtor within the base bankruptcy case by filing a Complaint to Determine Dischargeability of Debt in *Applied Capital, Inc. v. Edward L. Presley (In re Presley)*, Adversary No. 05-2084 ("Adversary No. 05-2084"); that the complaint filed in the Adversary No. 05-2084 seeks this Court's determination that the liability of Debtor to ACI arising from certain alleged fraudulent misrepresentations and other misconduct of Debtor prior to the petition date is not dischargeable under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6), respectively; that after the petition date, ACI commenced a civil action against several non-debtor parties in the United States District Court for the District of New Mexico by filing a Verified Complaint for Fraud, Negligent Misrepresentation, Unjust Enrichment, Violation of the New Mexico Unfair Trade Practices Act, and Civil Conspiracy in *Applied Capital, Inc. v. Francis Gibson, Gary Bellinger, Brian Ambrose, Kirk Voyles, Heritage Commercial Services, Inc., and Grizzly Drilling, Inc.*, Case No. 05 CV 00098 JOB/ACT (the "New Mexico case"); that the verified complaint filed in the New Mexico case alleges, *inter alia*, that about seven months prior to the petition date, Debtor and New Energy Co., LLC ("New Energy"), a Wyoming limited liability company in which Debtor is the controlling member

and operating manager, were part of a conspiracy with the non-debtor parties who have been joined as defendants in the New Mexico case, to defraud ACI out of \$550,000.00 in a transaction to fund the purchase of a fictional drilling rig that Debtor and certain of the defendants knew did not exist; that Debtor was not joined as a defendant upon commencement of the New Mexico case because that case was filed after the petition date, and ACI was enjoined by the automatic stay from continuing or commencing any judicial action against Debtor that was, or could have been, commenced before the petition date; that the allegations in ACI's complaint in Adversary No. 05-2084, including those factual allegations regarding Debtor's fraudulent misrepresentations and other misconduct, are similar or identical to the allegations that ACI has made in the New Mexico case and arise out of the same common nucleus of facts; that under 28 U.S.C. § 1334(c)(1), the Court has discretionary power to abstain from hearing a particular proceeding arising under Title 11 or arising in or related to a case under Title 11 in the interest of justice, or in the interest of comity with state courts or respect for state law; that after giving due consideration to the relevant factors identified by ACI in the motion for permissive abstention and at the hearing thereon, abstention from hearing Adversary No. 05-2084 until the New Mexico case is litigated to conclusion is in the interests of justice, comity, and respect for state law; and further that the circumstances identified by ACI in the motion for relief from stay and at the preliminary hearing thereon demonstrate the existence of cause for modifying the automatic stay to permit ACI to join Debtor as a defendant in the New Mexico case and to litigate its claims against Debtor and the other non-debtor parties in that case to conclusion; and counsel for ACI having made an oral motion at the joint hearings in this matter that the Court order the waiver of the ten-day stay of implementa-

tion of the decretal of this Order granting ACI relief from the automatic stay,<sup>2</sup> and after giving due consideration to the reasons articulated by ACI's counsel in support of the oral motion and the objections raised by Debtor to such motion, the Court further finds that in the circumstances presented, there does not exist a compelling reason justifying the waiver the ten-day stay of the implementation of the decretal of this Order granting ACI relief from the automatic stay, it is, therefore,

ORDERED that the joint motion of Applied Capital, Inc. for permissive abstention and for relief from the automatic stay be, and the same hereby is, granted; and, it is further

ORDERED that the Court shall abstain from hearing Adversary No. 05-2084 until the New Mexico case is litigated to conclusion, at which time it will be appropriate for the Court to hear Adversary No. 05-2084 and make a determination of the extent that any judgment entered in the New Mexico case will be excepted from discharge under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), and/or 523(a)(6); and, it is further

ORDERED that the automatic stay afforded by 11 U.S.C. § 362 be, and it hereby is, modified to allow Movant, Applied Capital, Inc., to join Debtor as a defendant in the New Mexico case that is pending in the United States District Court for the District of New Mexico and to litigate its claims against Debtor and the other non-debtor parties in that case to conclusion; provided, however, that Movant, Applied Capital, Inc., shall not take any action in that forum to enforce any judgment that may be entered against Debtor on the verified complaint or to otherwise enforce any such judgment against


<sup>2</sup> Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure provides that "[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise."

Debtor or property of the estate without a final decision of the Court on the merits of the  
complaint of Movant, Applied Capital, Inc., in Adversary No. 05-2084, or as the Court  
may otherwise order in this case; and, it is further

ORDERED that the oral motion made by Applied Capital, Inc. at the joint hearings that the Court order the waiver of the ten-day stay of implementation of the decretal of this Order granting it relief from the automatic stay be, and the same hereby is, denied.

DATED this 19 day of May, 2006.

BY THE COURT:

  
Peter J. McNiff  
United States Bankruptcy Judge

Service to:

Edward L. Presley  
Donn J. McCall  
Michelle R. Hankins